SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1972

Docket Number 72-766

JOSEPH CALABRO,

Petitioner,

-against-

UNITED STATES OF AMERICA.

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING

COMES NOW, JOSEPH CALABRO, petitioner pro se, before this most Honorable Court and requests that he be allowed to file his petition for rehearing that accompanies this application.

That on Saturday, March 17, 1973, the 25th day had passed since the denial of my petition for certiorari.

That on Saturday, March 17, 1973, I was in a position to file the aforementioned petition for rehearing in this Court. However, I did not know that this Court was open on Saint Patrick's Day which I believed to be a holiday. I incorrectly assumed that any day that falls out during a holiday or Sunday necessarily extends my time to Monday.

That on Monday, March 19, 1973, my petition for rehearing was served upon the Solicitor General and an attempt was made to file forty (40) copies accompanied by proof of service with this Court.

Due to the fact that Saturday is a day that the Court was open and counted – the filing on Monday was refused. I make this application to the Court to allow my petition for rehearing to go before the Court and not to be refused because I made a mistake in one day.

I have not filed the petition for rehearing for delay nor to be dilatory. My petition for rehearing was presented in good faith due to the fact that I discovered that pages very important to my counsel issue were deleted before this most Honorable Court.

The two issues that I raise before this Court are now substantiated by the appendix printed in my petition for rehearing. (1) I was denied right to counsel; and (2) that the jury was not properly polled, in that twelve jurors were not polled. Only eleven jurors were polled by the Court.

That I respectfully request that this Court allow my petition for rehearing to be accepted by the Clerk so that it may be reviewed and acted upon.

Respectfully submitted,

JOSEPH CALABOR, Pro Se
1359 86th Street
Brooklyn, New York

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-766

JOSEPH CALABRO

Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR REHEARING
(Pursuant to Rule 58)

Petitioner respectfully prays that the herein petition for rehearing issue in connection with a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit which was denied on February 20, 1973.

As part of this proceeding petitioner respectfully urges that the petition for a writ of certiorari be reconsidered in conjunction with the herein presentation.

JURISDICTION

Jurisdiction lies by virtue of Rule 58 and 59.

THE NEW ISSUES URGING FOR A REHEARING

1. The error complained of within the petition of certiorari, although held as a constitutional violation in the Sixth Circuit, *United States v. Smith*, 411 F.2d 733, was considered harmless as it did not prejudice petitioner. See opinion of appendix, p. A1.

However, during the course of the jury deliberation, certain instructions were requested by the jury which would have required competent legal representation, without which, grievously prejudiced petitioner. The jury inquiry was relevant to petitioner and the fact that petitioner was without counsel due to illness (Court of Appeals Appendix, pgs. 145a-149a, 47a, and appendix to this petition),* nor did he waive his right to counsel, his Sixth Amendment right was vitiated.

When the jury was polled by the Court in respect to their verdict, petitioner was alone without counsel, and the record reflects that 11 jurors responded. My Sixth Amendment requirement that there must be a unanimous twelve jury verdict was violated. The record shows that the Foreman of the Jury

*Several pages of the trial transcript were inadvertently left out of the appendix to the Court of Appeals.

was never polled. (Appendix B). Upon the foregoing petitioner urges that there are ample gounds for rehearing.

Respectfully submitted,

JOSEPH CALABRO
Petitioner Pro Se
1359 - 86th Street
Brooklyn, N.Y.

Certificate.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and that it is restricted to grounds specified in Rule 58(2) of the Rules of this Court.1150,

JOSEPH CALABRO
Petitioner Pro Se.

APPENDIX

(Including pages that were inadvertently left out of the original Appendix. The deletions of the original Appendix were discovered after the Petition for a Writ of Certiorari was denied.)

APPENDIX A

[4434]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

JOSEPH CALABRO, et al.

January 28, 1972

Before:

HONORABLE JACOB MISHLER, Chief U.S.D.J.

(Time noted: 10:45 o'clock p.m.)

THE COURT: I do not know whether the record has noted that Mr. Aronstein suffered a heart attack and has been taken to Long Island College Hospital. I do not know what effect this has on the defendant Calabro.

What do you say, Mr. Coonan?

MR. COONAN: Your Honor, at this point I would suggest it is up to Mr. Calabro whether he would be adequately represented by another attorney to present the material that the jury requires.

[4435]

THE COURT: Do you want to answer that question, Mr. Calabro?

THE DEFENDANT CALABRO: The best way I can. Does the Court feel it is fair if I had another attorney at this point — at this time?

THE COURT: Sure, I do. There may be nothing else for an attorney to do but take the verdict.

THE DEFENDANT CALABRO: That's the Court's decision, but it isn't mine.

THE COURT: What is yours?

THE DEFENDANT CALABRO: I couldn't say. Joe has been with us for four weeks. I don't know really.

THE COURT: All right, I have your opinion. I certainly would not sever on that statement, Mr. Coonan, because you are bound to have a double jeopardy claim.

Seat the jury, please.

(Jury present.)

THE CLERK: Jury note marked Court's Exhibit 16 for identification.

***

[4453]

JUROR NO. 11: Yes.

THE COURT: And Juror No. 12, is that your verdict?

JUROR NO. 12: Yes.

THE COURT: Is there any motion or motions that any individual wants to make before I dismiss the jury?

MR. KRIEGER: No, your Honor.

MR. DI BLASI: No motions in the presence of the jury.

THE COURT: We will discuss that.

I want to thank the jury for sitting on this very difficult case that took four weeks. Jury duty is two weeks and I know it was of great personal inconvenience to yourselves. It is a case that I am sure that you will long remember and one that I think will be in me yet for a long time. I think I may advise you at this time that just about the time I received the note before last, Mr. Aronstein suffered a heart attack and he was taken to Long Island College Hospital.

Of course, we all wish Mr. Aronstein the best. It does create some problems. I can see by this verdict that you had a lot of discussion

[4454]

with respect to Mr. Tortorello. If the verdict had come while

Mr. Aronstein still represented Mr. Calabro, I would have no problem. I do not know whether I have a problem yet, but those are the niceties and complexities of the law. You have done your job and you are dismissed with the thanks of the Court.

The jury is excused. I want everybody to remain in the courtroom.

THE FOREMAN: These are the exhibits.

(Exhibits handed to Marshal.)

(Jury leaves courtroom.)

***

[4455]

THE COURT: I will make this at 2:00 o'clock. In the meantime, Mr. Calabro, I suggest that you get other counsel. I won't delay indefinitely the proceedings here. If I am convinced that the verdict cannot stand, I will then set it aside and either direct an early trial here or suggest that a new indictment be returned in the Southern District.

At any rate, this will not hang in limbo. I will tell you that. If by next Friday I am certain in my own mind that the verdict can stand, I shall proceed and I think you should have counsel at the time. I can tell you that I tossed this over in my mind and I had a choice to make tonight

[4456]

and the choice was: Shall I adjourn the entire proceedings immediately upon hearing of Mr. Aronstein's illness and then take a chance of losing the jury and having a mistrial as to all counts and as to all defendants, or place one verdict in jeopardy. I do not know whether I made the right choice, but at any rate that was the choice. You may have become the beneficiary of that choice. I am not sure. I wouldn't throw my hat in the air and just assume that the verdict is no good. I would see a lawyer and get legal help immediately. I expect the Government to do its research on it and I shall do my own.

***

APPENDIX B

POLLING OF THE JURY

***

[4451]

I direct the Clerk to file the signed form of verdict.

Juror No. 2, you heard the verdict as given by the Foreman; is that your verdict?

JUROR NO. 2: Yes.

THE COURT: Juror No. 3, is that your verdict?

[4452]

JUROR NO. 3: Yes.

THE COURT: Juror No. 4, is that your verdict?

JUROR NO. 4: Yes.

THE COURT: Juror No. 5, is that your verdict?

JUROR NO. 5: It is.

THE COURT: Juror No. 6, is that your verdict?

JUROR NO. 6: It is.

THE COURT: Juror No. 7, is that your verdict?

JUROR NO. 7: It is.

THE COURT: Juror No. 8, is that your verdict?

JUROR NO. 8: Yes, sir.

THE COURT: Juror No. 9, is that your verdict?

JUROR NO. 9: Yes.

THE COURT: Juror No. 10, is that your verdict?

JUROR NO. 10: Yes.

THE COURT: Juror No. 11, is that your verdict?

[4453]

JUROR NO. 11: Yes.

THE COURT: And Juror No. 12, is that your verdict?

JUROR NO. 12: Yes.

THE COURT: Is there any motion or motions that any individual wants to make before I dismiss the jury?

MR. KRIEGER: No, your Honor.

MR. DI BLASI: No motions in the presence of the jury.

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